(3)

(4) Single Bench

HONRABLE HIGH COURT OF JUDICATURE AT BILASPUR.

S.B.

Cri.Appeal No:-687 /04.

3e 28/04

Filed on 11/8/04
by Shri Abhay Tiwari
Advocate

Appellant:- (In jail)

Ashok Kumar s/o.Josef Kumar aged-22 Yrs. Occupation-agriculture , R/o. Baram Pur , Get bajar , P.S. Get Bajar.Distt – Gajapati – Odisa.

VERSUS.

Respondant :-

R to D.A. (J) 11/8/04

State of C.G.

CRIMINAL APPEAL

Memo of appeal under section- 36 of N. D. P. S. Act.

Conviction..... Sentence

(19)

# HIGH COURT OF CHHATTISGARH AT BILASPUR

## Criminal Appeal No.687/2004

Singble Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Ashok Kumar

Versus

State of Chhattisgarh

Post for orders today.

Sd/-
Dilip Raosaheb Deshmukh
Judge

(20) A.F.R.

HIGH COURT OF CHHATTISGARH AT BILASPUR

Criminal Appeal No.687/2004

Singble Bench: Hon'ble Shri Dilip Raosaheb Deshmukh, J.

Ashok Kumar

Versus

State of Chhattisgarh

Shri Abhay Tiwari, Counsel for the Appellant.

Shri Ashish Shukla, G.A. with Shri U.K.S.Chandel, PL for the State.

JUDGMENT

(Delivered on 13. 02.2006)

This appeal is directed against the judgment dated 25-06-2004 delivered in Special Criminal Case No.03/2004 delivered by Shri T.P.Sharma, Special Judge (N.D.P.S. Act.) Durg whereby the appellant was convicted under Section-20(b)(ii)(C) read with Section-8(c) of Narcotic Drugs psychotropic Substances Act, 1985 (herein after referred to as the "Act") and was sentenced to R.I. for 10 years and a fine of Rs.1,00,000/- and in default of payment of fine to undergo additional R.I. for 3 years.

2. Briefly stated the prosecution story is that on 31-12-2003 at about 11.30 P.M., Station House Officer of Chowki-Khursipar Shri I.R.Sahu PW-4 while on town duty received secret information about the appellant bringing *ganja* in a attaché and bag for sale to Khursipar and after completion of necessary legal formalities Shri I.R.Sahu proceeded to the spot and saw the

appellant holding an attaché and a bag. The attaché and the bag of the appellant were searched and found to contain *ganja* like substance. Weighment was done. The attaché with its contents was found to weigh 17 K.g. and the bag with its contents was found to weigh 10 K.g. Samples of 25 gm *ganja* like substance was taken from the attaché and the bag, were sealed separately and marked as A-1 & A-2. The attaché and bag were also sealed and marked as A-3 & A-4. These articles were entrusted to Head Constable Shri Rajendra Singh PW-1, Chowki *Moharir* and Officer-in-charge, *Malkhana* on 01-01-2004 who endorsed the receipt on the seizure memo Ex.P-1. On 3/1/2004 vide memo of S.S.P., Durg one attaché along with sample marked Article-A and one bag along with sample marked Article-B was sent for analysis to the Forensic Science Laboratory, Raipur which opined vide report dated 12-02-2004 that Packet-A & Packet-B had contained *ganja*. After completion of investigation, the appellant was prosecuted. On 09-03-2004, the learned trial judge without looking into the documents filed by the prosecution framed the charge under Section-20(b)(ii)(C) read with Section-8(c) of the Act against the appellant for having been found in possession of only 10 K.g. *ganja*. The accused abjured the guilt. On 12-04-2004, P.S.-Chhawani produced the seized attaché, bag and sample packets in the Court. It was sealed and sent to *Malkhana* for safe custody. On 13-04-2004, the trial Judge observed that the quantity of *ganja* alleged to have been seized from the appellant was shown to be 27 K.g. by the prosecution. It, therefore, directed weighment of the property in Court. On the

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same day, the property was produced in Court and was weighed. It was found that the attaché contained 13 Kg. of *ganja* and the bag contained 7 Kg. *ganja*. These alongwith the sample packets of 25 g.m. each were separately sealed. The trial Judge cancelled the charge framed earlier and framed charge under Section-20(b)(ii)(C) read with Section-8(c) of the Act against the appellant. The appellant again abjured the guilt. The prosecution, in all examined 9 witnesses. No evidence in defence was led by the appellant. The trial Judge relying upon the evidence led by the prosecution and the report of the Forensic Science Laboratory convicted and sentenced the appellant as aforesaid in para-1.

3. Shri Abhay Tiwari, learned counsel for the appellant has assailed the impugned judgment on the ground that it is extremely doubtful that the Forensic Science Laboratory had examined the same substance which was seized from the appellant. He pointed out to the testimony of Station House Officer Shri I.R.Sahu PW-4 in para-15 which revealed that another person named Rakesh Kumar had also accompanied the appellant who was also in possession of an attaché and bag and a separate case had been instituted against Rakesh Kumar in Crime No.02/2004. He urged that F.I.R. clearly shows that the attaché and bag found in possession of the appellant had been marked as A-3 & A-4 and the samples taken therefrom marked as A-1 & A-2 whereas the report of the Forensic Science Laboratory did not make any mention of examination of the contents of attaché or bag bearing the abovementioned identification article marks. It

only mentioned that two sealed packets marked as Article-A & Article-B had been received and on examination the contents were found to be *ganja*. Learned counsel further pointed out that in the F.I.R. Ex.P-10 it was clearly mentioned that weight of the attaché with its contents was 17 Kg. and weight of the bag with its contents was 10 Kg., thus, total 27 Kg. whereas the property produced in the Court was found to weigh only 20 Kg. This created a serious doubt that the substance seized from the appellant was not the same which was examined by the Forensic Science laboratory. On these grounds, he urged that the appellant was entitled to be acquitted. On the other hand, Shri Ashish Shukla, Government Advocate with Shri U.K.S.Chandel, Panel Lawyer, for the State argued in support of the impugned judgment.

4. Having heard the rival contentions and after perusing the record of Special Criminal Case No.03/2004, the appeal deserves to be allowed. The F.I.R. Ex.P-10 clearly shows that the attaché and the bag was weighed along with its contents and was found to weigh 17 Kg. & 10 Kg. respectively. It clearly mentions that one sample of 25 gm. each was lifted from the contents of the attaché as well as of the bag and the sample packets were marked as A-1 & A-2 and the attache and bag were marked as A-3 & A-4. These identification marks are found missing in the memo of S.S.P., Durg dated 03-01-2004 Ex.P-11 which shows that the attaché along with sample Article-A and a bag along with sample Article-B was sent for analysis to the Forensic Science laboratory, Raipur. The report of the Forensic Science

laboratory also creates serious doubt because it does not mention that it had examined the contents of attache and bag. It only shows that it had received two sealed packets marked as Article-A & Article-B and on examination had found that it contained *ganja*. Thus, a serious doubt is created as to whether the samples taken from the contents of the attache and bag found in possession of the appellant and marked as A-1 & A-2 had been sent for examination to Forensic Science laboratory, Raipur.

5. It is beyond comprehension as to how the learned trial Judge initially framed the charge under Section-20(b)(ii)(B) against the appellant for having been found in possession of 10 Kg. *ganja* whereas the documents filed by the prosecution clearly showed that the attaché with its contents weighed 17 Kg. and 10 Kg. respectively, thus, total 27 Kg. *ganja* in all. It is also strange that the learned trial Judge did not apply its mind to the fact that the memo of S.S.P. as well as the report of Forensic Science laboratory, Raipur did not bear the same identification mark of the samples as was mentioned in F.I.R. Ex.P-10. It also overlooked that the endorsement by Head Constable Shri Rajendra Singh PW-1 on seizure memo Ex.P-1 clearly showed that he had received one attaché, one bag and 4 sample packets in sealed condition whereas the F.I.R. clearly mentioned that only two samples which were marked as A-1 & A-2 had been prepared. Station House Officer Shri I.R.Sahu PW-4 who admitted in para-15 of his cross-examination that another person named Rakesh Kumar had accompanied the accused-appellant was also

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found to be in possession of an attaché and bag for which a separate case was registered by him. In the abovementioned circumstances, it cannot be ruled out that the sample sent for analysis to the Forensic Science Laboratory, Raipur in this case was not same which had been taken from the substances alleged to have been found in the possession of the appellant. In the above situation, the report of Forensic Science Laboratory Ex.P-22 could not form the basis for convicting the appellant under Section-20(b)(ii)(C) read with Section-8(c) of the Act. Severe punishment extending up to minimum 10 years and minimum fine of Rs. 1 Lakh is prescribed for offences punishable under Section-20(b)(ii)(C) read with Section-8(c) of the Act. In this case, the appellant is in jail since 02-01-2004 i.e. for a period of over two years. It was, therefore, expected that while appreciating the evidence led by the prosecution, the Trial Judge ought to have applied its mind to the abovementioned glaring discrepancies instead of mechanically recording the conviction and awarding sentences against the appellant.

6. In the result, the appeal is allowed. The conviction of the appellant under Section-20(b)(ii)(C) read with Section-8(c) of the Act. and the sentences awarded thereunder are set-aside. The appellant is acquitted and shall be set at liberty forthwith, if not required in any other case. Fine, if paid, shall be refunded.

**Sd/-**
**Dilip Raosaheb Deshmukh**
**Judge**

Tumane